

MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, New York 10178
Tel.: (212) 309-6000
Fax: (212) 309-6273

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
MALRY TARDD and OTTO WHITE,

Plaintiffs,

-against-

BROOKHAVEN NATIONAL LABORATORY, a.k.a.
and/or d/b/a BROOKHAVEN SCIENCE ASSOCIATES,
CONRAD FORSTER, in his individual and official
capacity; MICHAEL GOLDMAN, in his individual and
official capacity; WILLIAM HEMPFLING, in his official
and individual capacity; SUE FOSTER, in her official and
individual capacity; WALTER DEBOER, in his official
and individual capacity; STEVE DIERKER, in his official
and individual capacity; ED HAAS, in his official and
individual capacity; MICHAEL CARUSO, in his official
and individual capacity; MICHAEL BEBON, in his official
and individual capacity; DEREK LOWENSTEIN, in his
official and individual capacity; WILLIAM GUNTER, in
his official and individual capacity; THOMAS
SHERIDAN, in his official and individual capacity;
PETER PAUL, in his official and individual capacity;
KENNETH BROG, in his official and individual capacity,

Defendants.
-----X

Case No. CV-04-3262
(ADS) (ARL)

ELECTRONICALLY FILED

**DEFENDANT MICHAEL CARUSO'S NOTICE OF MOTION
AND MOTION TO DISMISS**

PLEASE TAKE NOTICE that pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, and upon the accompanying Memorandum of Law, Affidavit of Michael M. Goldman and Affidavit of Christopher A. Parlo, in support thereof, Defendant Michael Caruso will move this Court before the Honorable Arthur D. Spatt, United States District Court Judge,

on a date and at a time to be designated by the Court, at the United States Courthouse for the Eastern District of New York, 1024 Federal Plaza, Central Islip, New York 11722, for an Order granting Defendant Michael Caruso's Motion to Dismiss the Second Amended Complaint.

MOTION

Plaintiffs Malry Tardd and Otto White have filed an action alleging claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000(e) et seq. (Count One), New York State Human Rights Law, N.Y. Exec. Law §§ 296 (Count Two), Title VI, 42 U.S.C. § 2000(d) (Count Three), Breach of Contract (Count Four), 42 U.S.C. § 1981 (Count Five), and 42 U.S.C. §§ 1985(3) and 1986 (Count Six). Defendant Michael Caruso hereby moves to dismiss the Second Amended Complaint under Federal Rules of Civil Procedure 12(b)(6) and 12(c) for failure to state a claim upon which relief can be granted and for a judgment on the pleadings.

Dated: February 28, 2005
New York, New York

Respectfully submitted,

Morgan Lewis & Boekius LLP

By: 

Christopher A. Parlo (CP-4310)

101 Park Avenue
New York, New York 10178
Tel.: (212) 309-6000
Fax: (212) 309-6001

Attorneys for Defendants